IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2126 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO LTD.

Versus

CHINTHARBHAI SIBABHAI,GUARDIANOF MINOR BHARTIBEN

Appearance:

MS MEGHA JANI for appellant
MR NIRZAR S DESAI for Respondent No. 1
None appears on behalf of respondents Nos.2 & 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of Order: 10/10/2002

ORAL ORDER

(Per : MR. JUSTICE H.K.RATHOD)

The Apex Court has observed, in paragraph 12 of the decision in the case of R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755 that :

"12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

2. Heard learned Advocates Ms.Megha Jani appearing on behalf of the appellant and Mr.Nirzar Desai appearing on behalf of respondent No.1-claimant.

3. Admitted. Notice of admission is waived by Mr.Nirzar Desai appearing on behalf of respondent No.1.

4. At the time of hearing the application for condonation of delay in filing this appeal, we have considered the merits of the award passed by the Motor Accident Claims Tribunal (Aux.), Bhavnagar and therefore, with the consent of both the learned Advocates, this First Appeal is taken up for final disposal, today.

5. In this appeal, the appellant Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal (Aux.), Bhavnagar, dated 22nd September 2000 passed in M.A.C.P. No.290 of 1997.

6. The brief facts of the present appeal are as under:

Initially, the claimants had filed an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short), which was filed by the father of deceased Ashokbhai Chitharbhai, on behalf of himself and his minor daughter, for claiming compensation in respect of the death of Ashokbhai in a motor accident on 12th February 1997. According to the case of the claimants, deceased Ashokbhai along with his father, the claimant-Chitharbhai was travelling in a truck on 12th February 1997 for going towards village Sanes. Some time in the morning hours,

truck No. GRR 4761 met with an accident with another truck No. UP 14 1225. The two trucks collided on the road going from Bhavnagar to Tarapur near village Nari. According to the claimant, the said accident had occurred due to the negligence on the part of the drivers of both the trucks. Ashokbhai expired on the date of the accident. The main petition Exh. 1 was filed on 11th April 1997 and along with the main petition, the claimants had also filed an application Exh.15 praying for interim compensation of Rs.50,000/- apparently under Section 140 of the Act. The Tribunal has not passed any order upon the said application, though the claimants produced certain documents with regard to the factum of the accident. Opponent No.1 Mukeshbhai is the owner of truck No. GRR 4761, opponent No.2 is the owner of truck No. UP 14 1225 while opponent No.3 is Oriental Insurance Company, which incidentally, is the insurer of both the vehicles. The Insurance Company has filed the written statement at Exh.9 on 10th June 1997.

During the pendency of the main petition under Section 166 of the Act, on behalf of the claimants, an application at Exh.172 has been filed under Section 163-A of the Act on 12th July 2000. Opponent No.3 Insurance Company has filed the reply at Exh.175 to the present application. The tenor of the reply at Exh.175 is that at the time of filing the main petition, an application was already filed for interim compensation under Section 140 of the Act and thereafter, after a long time, application under Section 163-A has been filed. Therefore, according to the Insurance Company, the said application is not maintainable. A further contention has been raised by the Insurance Company that the claimants shall have to decide, at the time of filing the main petition, whether they want to claim interim compensation either under Section 140 or under Section 163-A of the Act. The Insurance Company has also raised a contention that in case the application under Section 163-A is decided, the main petition will conclude. This contention has been examined by the Tribunal in light of various provisions made under the Act and after considering the relevant provisions of Section 158(6) and Section 166(4) of the Act which empower the Tribunal to consider suo motu the case sent by Police Station as a petition under the Act. This aspect has been considered by this Court in the case of New India Assurance Company v. Minor Sanjay Vajubhai, reported in 1999 (1) GLR 403 wherein it has been held that it is the legal obligation of the Tribunal to suo motu consider the matter for grant of interim compensation. The Tribunal has considered that this being the legal position, the Tribunal is

empowered to determine the compensation which the claimants are entitled to under Section 163-A of the Act at any stage of the proceedings and even without any application by the claimant. In fact, it would be the duty of the Tribunal to proceed on its own to determine interim compensation under Section 163-A when the said provision is found applicable. Thereafter, the Tribunal has considered the decision of the Apex Court in the case of U.P.State Road Transport Corporation v. Trilok Chandra, reported in (1996) 4 SCC 362 and thereafter considered Schedule-II attached to Section 163-A and decided the compensation in favour of the claimants. Ultimately, the Tribunal considered the evidence of the claimants that deceased was doing the work of polishing diamonds and was earning Rs.3000 to Rs.3500/- per month. Exh.74/1 is a certificate issued by one Jasmatbhai Patel indicating that deceased Ashokbhai was working in his factory for polishing diamonds in the year 1997. He has also certified in the certificate that in January 1997 the income of Ashokbhai was between Rs.3200/- to Rs.3500/-. After considering this evidence, the Tribunal has assessed the income of the deceased at Rs.2000/- per month which would work out to Rs.24,000/- per annum. Considering the age of the deceased to be in between 15 and 20 years, the Tribunal has applied a multiplier of 19 and a compensation of Rs.4,56,000/- has been awarded. The Tribunal has deducted 1/3rd amount, i.e. Rs.1,52,000/- towards the expenses which the deceased would have incurred towards maintaining himself, from the said amount of compensation of Rs.4,56,000/- and thus the amount comes to Rs.3,04,000/- which has been awarded. The Tribunal has added Rs.2000/- towards funeral expenses and an amount of Rs.2500/- has been awarded towards loss of estate. Thus, a total amount of Rs.3,08,000/- has been awarded as compensation with 12% interest from the date of application with proportionate costs.

7. Learned Advocate Ms.Megha Jani has raised only one contention before us that the Tribunal has decided application Exh.172 filed by the claimants on 12th July 2000 during the pendency of application under Section 166 of the Act. This being an application for interim compensation, the Insurance Company is not able to get any opportunity to challenge the income of the deceased and the application under Section 166 was pending before the Tribunal. She, therefore, submitted that the Tribunal has not given effective opportunity while deciding the application under Section 163-A of the Act and no oral evidence has been led by the claimants and no opportunity of cross examination has been given to the Insurance Company. She, therefore, submitted that in

light of these facts, the matter may be remanded back to the Tribunal with a view to give reasonable opportunity to the Insurance Company to challenge the income of the deceased. However, it is made clear that Insurance Company has not requested to the Tribunal to give opportunity to cross-examination of claimant. No such application was filed by the Company. No effort was made to get chance of cross-examination of claimant to challenge the income of deceased. No submission was made before the Tribunal to that effect. Even in submission also, income of the deceased is not challenged. Even though, such contention was raised by the Company before us, it is for the first time. Inspite of the said facts, we are examining the said contention in light of object of Section 163-A and various decisions of the Apex Court on the said questions.

8. Learned Advocate Mr.Nirzar Desai appearing on behalf of respondent No.1 - claimant has submitted that the main application filed by the claimants under Section 166 of the Act was pending before the Tribunal, but he has no instructions from the counter part appearing before the Tribunal as to whether the said application has already been withdrawn by the concerned Advocate or not. He further states that in any case, the claimants now will not proceed in respect to the application under Section 166 of the Act. Therefore, according to his submission, the contention raised by learned Advocate Ms.Megha Jani that during the pendency of the application under Section 166, the application for interim compensation under Section 163-A has been decided by the Tribunal and in view of the decision of the Apex Court, the claimants are entitled to file application under Section 166 or under Section 163-A, being an alternative proceeding, does not survive. In view of the statement made by learned Advocate Nirzar Desai, the main petition appears to be withdrawn from the Tribunal and therefore, now only this application under Section 163-A is considered to be final.

9. Learned Advocate Ms.Megha Jani has raised a contention that the Insurance Company is not given a reasonable opportunity to cross examine the claimants with regard to the income of the deceased and that the application under Section 163-A has been decided by way of interim compensation without there being any evidence of income of the deceased. The Insurance Company has raised certain contention before the Tribunal in the written statement at Exh.175. The Tribunal has examined this question as to whether the claimants can be prevented from filing application for interim

compensation under Section 163-A of the Act or not, if they are entitled to, otherwise. In light of the facts, the Tribunal has considered the approach of the claim Tribunal in such matter which was required to be clarified. The Motor Vehicles Act, 1988 is a benevolent Legislation conferring powers on the Claims Tribunal to award "just" compensation when a motor accident takes place. Section 163-A was introduced in the Act by an amendment of 1994. If the said provision is seen in proper perspective, Section 163-A confers a right on accident victims to claim compensation as per the Second Schedule. According to the provisions made in the Act, Section 158(6) provides that in case of accident involving death or bodily injury to any person, the Officer incharge of a Police Station shall forward a copy of any information regarding such an accident within 30 days from the date of recording of the information. Section 166(4) of the Act provides that the Claims Tribunal shall treat any report forwarded to it under Section 158(6) as an application for compensation under this Act. Therefore, even if the present application at Exh.172 was not filed by the claimants for compensation, the Tribunal was empowered to treat the report of the accident under Section 158(6) of the Act as an application for compensation and proceed suo motu to determine the amount of compensation payable to the victims. The Tribunal, in such a situation, award compensation under Section 163-A or under Section 166 of the Act. In such situation, the approach of the Tribunal has been examined by this Court and indicated in the judgment in the case of Ramdevsingh v. Hansrajbhai, reported in 1999 (1) GLR 631. In paragraph 45 of the said judgment, this Court has held that a Claims Tribunal can suo motu consider the matter for grant of interim compensation to the claimants under Section 163-A of the Act on receipt of report of Police under Section 158(6) of the Act. In respect to application for interim compensation under Section 140 of the Act, this Court has also considered the same aspect in the case of New India Assurance Co. v. Minor Sanjay Vajubhai, reported in 1999(1) GLR 403 wherein this Court has held that it is the legal obligation of the Tribunal to suo motu consider the matter for grant of interim compensation. This principle would apply with equal force to powers of the Tribunal to determine the compensation which the claimants are entitled to under Section 163-A of the Act. This being the legal position, the Tribunal is empowered to determine the compensation which the claimants are entitled to under Section 163-A of the Act at any stage of the proceedings and even without any application by the claimants. On the contrary, it was the duty of the

Tribunal to proceed on its own to determine the interim compensation under Section 163-A when the said provision is found applicable.

10. In light of the above legal position, the application was required to be decided by the Tribunal. Section 163-A of the Act provides that the owner of the motor vehicle or the authorised insurer shall be liable to pay in case of death or permanent disability on account of accident arising out of the use of motor vehicle compensation as indicated in the Second Schedule to the legal heirs or the victim as the case may be. It is further provided in sub-section (2) of Section 163-A that in any claim for compensation under Section 163-A, the claimant is not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle. In other words, this compensation is to be awarded on the principle of "no fault liability". Similarly, Section 163-A is also similar to Section 140 of the Act with the difference being with regard to the quantum of compensation. Whereas Section 140 provides for compensation of Rs.25,000/- in case of permanent disablement and Rs.50,000/- in case of death, compensation under Section 163-A is to be awarded as per the structured formula contained in the Second Schedule.

11. Recently the Division Bench of Bombay High Court has examined the scope of Section 163-A of the M.V. Act in case of Latabhai Bhagwan Kakate v. Mohmad Ismail Mohd. Saab Bhagwan reported in 2002 ACJ 407. The relevant paragraphs are quoted as under:

"6. It seems that the legislature has accepted the recommendation of the Law Commission of India in its 119th Report that the liability to pay compensation in every motor accident must be on no fault liability. It was observed that in the event of death of a victim of a motor accident and the consequent harm caused to his dependents, the question whether the person responsible for the action causing harm had committed a fault or it was an inevitable accident, is hardly relevant from the point of view of the victim or his/her dependents. The expanding notions of social security and social justice envisaged that the liability to pay compensation must be on no fault liability. The Law Commission's report came in the wake of the recommendation made by the Apex Court that the compensation for motor vehicle

accidents should be on no fault basis and the determination of the quantum must be liberal, since law values life and limb in a free country. The plight of the victims of motor vehicle accidents was highlighted by Chandrachud, C.J. in Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi, 1981 ACJ 507 (SC), wherein his Lordship observed:

> "The victims of road accidents or their dependents are driven to wage a long and unequal battle against the insurance companies, which deny their liability on every conceivable variety of factual disputations from 'who was driving the vehicle' to 'whose negligence was the sine qua non of the accident'. The delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes the sting out of the laws of compensation because, an infant child who seeks compensation as a dependant of his deceased father has often to await the attainment of majority in order to see the colour of the money. Add to that the monstrous inflation and the consequent fall in the value of the rupee: Compensation demanded say, ten years ago, is less than quarter of its value when it is received today. We do hope that the Government will apply itself seriously and urgently to this problem and find a satisfactory method of ameliorating the woes of victims of road accidents."

A similar view was also expressed by the Supreme Court in State of Haryana v. Darshana Devi, 1979 ACJ 205 (SC) and Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai, 1987 ACJ 561 (SC).

7. In March 1990, a Committee to review the provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 was set up by the Government of India and the said Review Committee in its report suggested several changes in the Act. The Review Committee considered that determination of the claim cases pending before the Claims Tribunal takes a long time. To obviate such delay, a proposal was made that

early finalisation of compensation claims would greatly facilitate to the advantage of claimants, the vehicle owners as well as the insurance companies, if a system of structured compensation can be introduced. Under such scheme the affected party can have the option of his accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels. The Review Committee felt that determination of cases takes long time and, therefore, under a system of structured compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of minor, loss of income on account of loss of limb, etc., can be notified and the affected party can then have option of accepting lump sum compensation under the scheme of structural compensation or of pursuing his claim through the normal channels. The report of the Review Committee was considered by the State Governments and comments were notified. The Transport Development Council also made recommendations for providing adequate compensation to the victims of road accidents without going into long drawn procedure, on the basis of age/income which is more liberal and rational. On the basis of the said recommendations, after considering the report of the Transport Development Council and the Review Committee the provision of Section 163-A was enacted for payment of compensation to road accident victims on the basis of a new predetermined structured formula.

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17. The only other question which now remains to be considered is when section 163-A clearly stipulates that it is not necessary for the claimants to plead and prove negligence, would it be open for the owners of the vehicles/insurance companies to establish that the accident occurred due to negligence of the victim or he has contributed to the negligence. It is evident from the legislative history of section 163-A that the section is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment as per structured formula by way of compensation to the victims of accidents arising out of the use of motor vehicle

on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficial purpose underlying the enactment in preference to a construction which tends to defeat the purpose. The object or purpose of introducing section 163-A is to give compensation to the victims of the motor vehicles accidents or to their relatives, i.e., a fixed compensation on the basis of Table/Second Schedule without going into a long drawn trial. A combined reading of sub-sections (1) and (2) of section 163-A shows that the victim or his heirs are entitled to claim from the owners/insurance companies compensation for the death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle without proof of any fault or negligence in contrast to section 166 providing for getting compensation on the basis of fault liability where the claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned. Thus section 163-A lays down that if it is established by the claimants that the death or disablement was caused due to accident arising out of the use of the motor vehicle, then they will be entitled to receive compensation as per the Second Schedule as a matter of right without a long drawn trial. If we accept the interpretation suggested by the insurance companies it would mean that the claimants will have to necessarily prove the element of negligence on the part of the driver of the vehicle although the legislature has clearly stipulated that it is not necessary for the claimants to plead or prove negligence on the part of the driver of the motor vehicle because if the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default on the part of the victim or claimants, naturally the claimants will have to lead evidence in rebuttal to prove the negligence on the part of the driver of the motor vehicle. Surely the legislature did not intend to create such a situation as it would defeat the very object of introducing the provision of section 163-A conferring a cheap, efficacious and speedy remedy on the claimants to claim compensation on the basis of no fault liability as per the structured formula contained in the Second Schedule. We are of the view that since

the owner of the vehicle or insurance company is made liable to pay compensation irrespective of the fact whether the driver of the vehicle is at fault, there is no question of owners of vehicles or insurance companies being allowed to lead any evidence to prove the negligence and/or contributory negligence on the part of the victim.

18. The object of enacting section 163-A and the Second Schedule is to avoid long drawn litigation and inordinate delay in payment of compensation to the victim or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump sum compensation based on structured formula, instead of a higher compensation to which he may consider himself entitled, he would get relief at the earliest. This no fault liability has been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be on 'no fault liability' as observed by the Apex Court in Ramanbhai Prabhatbhai's case, 1987 ACJ 561 (SC), i.e. "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents". However, the law before insertion of section 163-A was giving a limited benefit to the extent provided under section 140 for no fault liability and determination of the compensation amount on no fault liability was taking a very long time. That mischief is sought to be remedied by introduction of section 163-A and the delay is sought to be avoided to a large extent by affording benefit to the victims on structured formula basis. If it is held that the right of the owner of the vehicle or the insurance company to prove negligence or wrongful act or default of the victim is kept alive whole purpose of introducing of section 163-A by the legislature will be frustrated. If this right is to be recognised as implied or to be read in the context of section 163-A, then we do not think that there would remain any difference between sections 13-A and 166.

19. In the case of Ramdevsingh V. Chudasma v. Hansrajbhai V. Kodala, 1999 ACJ 1129 (Gujarat), a Division Bench of Gujarat High Court has

categorically held that under section 163-A the owner or insurance company cannot plead and prove negligence or default of the victim. The Division Bench observed:

"From the above differences in sections 163-A and 166 of the Motor Vehicles Act, the intention of the legislature becomes clear. Provision for compensation is a benevolent object of the legislature. To achieve that benevolent object, which had a number of hurdles to be crossed, the legislature has introduced section 163-A in the Act. The fact remains that by the use of motor vehicle when the accident takes place the victim is either injured or may be fatal. If a breadwinner of the family is taken away or if he is made crippled, the family of the dependents are required to be continued to be maintained from the next day and thereafter. If the accident is fatal one and breadwinner in the family is the victim how the members of the family/dependents will get their bread? Does a solace satisfy the hunger or need of the person? Making necessary provision in the legislation like section 166 has proved to be solace only as long drawn litigation takes place. To avoid the same and to provide instant and immediate relief as it appears from the Statement of Objects and Reasons and the report of the Committee, section 163-A is introduced by the legislature to provide for immediate relief regardless of fault. This deviation from the common law is only with a view to adopt or reach the human need of the society. If we read that the owner of the vehicle or the insurance company is entitled to defend the claim by advancing proof of wrongful act of neglect or default of the victim as it is not specifically prohibited in sub-section (2), then again, we are falling in the trap which the legislature has tried to avoid or get rid thereof of section 166 of the Act. Introduction of no fault is as a part of social justice. For the purpose of achieving social justice, legislature has departed from

usual common law. An additional benevolent provision is added in a beneficial legislation for award of compensation....."

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"The question of negligence is not required to be gone into. There be negligence or not but the involvement of the vehicle makes them liable. In substance, it can be said that the scope of section 163-A is that as soon as the accident occurs, it is signing of the blank cheque by the owner of the vehicle drawn on the insurer of the vehicle endorsed in favour of the claimants to be filled in by the Tribunal bearing in mind the structure provided in the Second Schedule of the Motor Vehicles Act. On receiving the necessary information, the Tribunal shall decide the multiplier and come to the conclusion about the income and a figure will be filled in the cheque, meaning thereby, award may be passed. This discharges the social responsibility of the State. When it was before the legislature to add or not section 163-A it has been made clear from the object that an adequate compensation to the victim of road accidents without going into long drawn procedures be provided. Hence, in the object, they have used the word adequate, while in the Act in section 168 the word "just" is provided. The word 'adequate' was used by the legislature in its 'Statement of Objects and Reasons' but did not transgress further in the section incorporated by the legislature. Instead of either just or adequate compensation be provided, legislature pre-determined the same and placed in the statute book the Second Schedule for the same. As we have discussed earlier, 'predetermined' means decided in advance. Therefore, the question of it being 'just' or 'adequate' does not remain open or at large for the Tribunal to decide and has given an example at that stage. The legislature

has behaved in a specific manner and based on experience and catena of decisions of the High Courts and Apex Court has introduced a Schedule providing for a predetermined compensation. For an application under Section 163-A, forum is provided under section 165 of the Act but procedure is not prescribed as it is one prescribed under Section 168 when an application under section 166 is filed. This suggests that a summary procedure is contemplated for award on the basis of predetermined compensation provided in Schedule. Central Government has made it open vide sub-section (3) of section 163-A to amend the same to keep pace with the varying cost of living in the country. On a proper reading of section 163-A, an application made thereunder is required to be decided on affidavits and the documents annexed thereto. There will be no scope for any long drawn trial as there would be no issues which need to lead evidence by either of the parties. Vide sub-section (2) of section 163-A the question of negligence will not be an issue for deciding the said application. So far as the question of income is concerned, the same can be decided on affidavits supported by documents if there are any. Income would be personal knowledge of the claimants having necessary evidence to support the same. So far as the question of age is concerned, it will be also within the special knowledge of the claimants and the same can be supported by them by documentary evidence be it by opinion of doctor who performs the post-mortem. So far as the injuries are concerned there will be necessary medical evidence to support the same. Such material evidence may be supported by affidavit of the doctor. Therefore, in our opinion, in view of the provisions of section 163-A there is no scope for any trial and recording of evidence is intended to be dispensed with and can be dispensed with if the requirements of section 163-A are satisfied."

20. In oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, 2001 ACJ 827 (SC), after a detailed examination of the scheme of section 163-A the Apex Court observed as under:

> "Lastly, for interpretation and construction of section 163-A, we would refer to its heading and language. The heading is 'Special provisions as to payment of compensation on structured formula basis'. At the outset, we would make it clear that for interpretation of the words of section the language of the heading cannot be used to control the operation of the section, but at the same time being part of the statute it prima facie furnishes some clue as to the meaning and purpose of section [Re: K.P.Varghese v. I.T.O., (1982) 1 SCR 629 at 647]. In case of ambiguity or doubt heading can be referred to as an aid in construing the provision. This heading indicates that the legislature has envisaged special provision for paying compensation on structural formula basis instead of paying the compensation by long drawn litigation after establishing fault liability. Section also begins with non obstante clause 'notwithstanding anything contained in this Act or any law for the time in force.' This would mean that it is not subject to any adjudication of right to claim compensation as provided under the Act. The owner of the motor vehicle or the authorised insurer would be liable to pay compensation due to accident arising out of the use of motor vehicle".

In view of the foregoing discussion and in the light of the above observations of the Supreme we have no hesitation in rejecting the contention that it would be open for the insurance companies or owners of the vehicles even under section 163-A to prove negligence or contributory negligence on the part of the victim."

In light of above observation, the view taken by Apex Court in case of Oriental Insurance Company Ltd. v. Hansrajbhai V. Kodala reported in 2001 ACJ 826, in paragraphs 21 and 22 is reproduced as under:

"21. Lastly, for interpretation and construction of section 163-A, we would refer to its heading and language. The heading is "Special provisions as to payment of compensation on structured formula basis." At the outset, we would make it clear that for interpretation of the words of section the language of the heading cannot be used to control the operation of the section, but at the same time being part of the statute it prima facie furnishes some clue as to the meaning and purpose of section [Re: K.P.Varghese v. I.T.O. (1982) 1 SCR 629 at 647]. In case of ambiguity or doubt heading can be referred to as an aid in construing the provision. This heading indicates that the legislature has envisaged special provision for paying compensation on structural formula basis instead of paying the compensation by long drawn litigation after establishing fault liability. Section also begins with non-obstante clause 'notwithstanding anything contained in this Act or any law for the time being in force. This would mean that it is not subject to any adjudication of right to claim compensation as provided under the Act. The owner of the motor vehicle or the authorised insurer would be liable to pay compensation due to accident arising out of the use of motor vehicle. Section 163-B further clarifies that claim petition can be filed either under section 140 or section 163-A but not under both sections.

22. The learned counsel for the claimants, however, submitted that if we compare the language used in sections 163-A and 140(1), it would be apparent that section 140 contemplates payment of compensation by the owner of the vehicle. As against this, section 163-A contemplates payment of compensation by the owner of the vehicle or authorised insurer. It is submitted that even if we read the said phrase as 'owner of the motor vehicle of authorised insurer' as 'owner of the motor vehicle or authorised insurer' on the assumption that 'of' is wrongly used, then also it is their contention that section 163-A envisages payment either by the authorised insurer or by the owner of the motor vehicle. It has wider implication and, therefore, compensation beyond maximum of Rs.50,000/- is provided in Second Schedule and hence the payment under section 163-A should not

> be considered as alternative to payment of compensation under the fault liability. In our view, it is true that section 140 talks of payment of compensation by the owner of the vehicle, while section 163-A after reading 'of' as 'or' would mean that owner of the vehicle or the authorised insurer would be liable to pay compensation under section 163-A. But that would not make any difference because determination of compensation under section 163-A is final and not as an interim measure. As stated above, the legislature has deliberately not provided that it is in addition to the compensation payable on the principle of fault liability. There is no provision for adjusting compensation payable under section 163-A with the other payment on fault liability under the Act."

12. In view of the above observation of the Apex Court the object and nature of section 163-A is not changed. It is declared that the remedy under sections 166 and 163-A has alternative meaning wherein there is no change in section with regard to the right of the claimant and the power of the Tribunal. It is also made clear that even though the claimant has not filed application under section 166, he is entitled to file application under Section 163-A.

13. The Apex Court has considered the remedy available to the claimants under sections 166 and 163-A of the M.V. Act being alternative but that does not mean that the nature and object of section 163-A is totally changed and the proceedings under section 163-A cannot be replaced by the provisions of section 166 of the Act. There is vast difference between these two sections. In one, there is full fledged inquiry and unlimited compensation can be claimed by the claimants and in the other case, under section 163-A, the claimants are entitled to claim a limited compensation specified under Second Schedule of the Act. The Tribunal cannot go beyond the scope of the Second Schedule. Therefore, there is vast difference between the two sections, namely, sections 166 and 163-A of the Act. Therefore, application submitted by the claimants under section 163-A either during the pendency of the application under section 166 or not filing the application under section 166 and straightaway filing application under Section 163-A of the Act will not alter the object and nature of the section and, therefore, while deciding an application under section 163-A, the Tribunal is duty bound to observe the provisions while granting compensation to the

claimants. Application under section 163-A cannot be tried an application under section 166 of the Act by the Tribunal. Therefore, the Insurance Company is not entitled to insist that the claimants shall have to prove negligence and the Insurance Company may be given an opportunity to disprove the said facts. Similarly, in respect of the income part also, the Insurance Company is not entitled to have any opportunity to lead any evidence or to have a right of cross examination while deciding an application under section 163-A of the Act, otherwise, the entire provisions and the object of section 163-A would become nugatory.

14. The Tribunal, after examining this legal aspect, has considered the merits of the matter. In the main petition and even in the application for interim compensation under Section 163-A which was submitted by the claimants vide Exh.172, it is stated that the deceased was earning Rs.3000 to Rs.3500 per month (as mentioned in paragraph 11 of Exh.1 and paragraph 21 of the present application). The deceased was doing the work of polishing diamonds and was earning Rs.3000 to Rs.3500 per month. In support of the said figure, the Tribunal has considered the certificate vide mark 74/1 issued by Jasmatbhai Patel indicating that deceased Ashokbhai was working in his factory for polishing diamonds in the year 1997. He has also certified that in January 1997, the income of Ashokbhai was between Rs.3200 to Rs.3500/-. The Tribunal has taken reasonable care on the ground that this certificate has been issued by a private party and no documentary evidence in support of it has been produced by the claimants and therefore, the Tribunal has assessed the monthly income of the deceased at Rs.2000/- which was worked out to be Rs.24,000/- per annum. These being the merits of the matter, one more aspect is required to be examined in light of the calculation of compensation provided in Schedule-II. The figure which has been provided in the Second Schedule would show that in determining the "figures in thousand" applicable to compensation in case of death, a different multiplier is applied. After considering the age group provided in the Second Schedule and multiplier, if any figure of the annual income in the Second Schedule is multiplied with the above multiplier, one would get the exact amount of "Rupees in thousand" shown against the respective age group and the figure will differ only when the compensation works out to less than Rs.50,000/-. In all such cases, the figure mentioned is Rs.50,000/-. Therefore, in case of death, the compensation cannot be less than Rs.50,000/-. Hence, the same provision has been made by the Legislation under Section 140 for

providing minimum compensation of Rs.50,000/- in case of death. In light of these provisions made in Schedule-II, this Court has examined the scope of Section 163-A in the case of Ramdevsingh (supra) wherein this Court has held that Section 163-A provides for summary remedy on the principles of "no fault". It is further held that in the proceedings under Section 163-A, the claimant is not required to prove any negligence or default of the owner of the vehicle and that the Insurance Company cannot be allowed to plead and prove negligence or default of the victim in such proceedings. In the said decision in paragraph 33, it has been held that the application under Section 163-A is a "final claim for certain heads" of compensation and that amount awarded under these heads "is not to be adjusted against other heads for which the claim is required to be established like an ordinary claim". In paragraph 43 of the said judgment, it is further held that application under Section 163-A "is a substantive application for heads referred therein."

15. While deciding the application under Section 163-A, the Tribunal has considered the complaint which was filed by the Police authority, at Exh.16, the panchnama of the scene of offence at Exh.165, the post mortem report at Exh.66, inquest panchnama at Exh.67, the RC book of vehicle No.GRR 4761 at Exh.68, the Insurance Policy of truck No.GRR 4761 at Mark 176/2 and the policy in respect of truck No. UP 14 1225 at Mark 176/1. In view of the above documents, both the vehicles were insured with the Insurance Company and the insurance was in operation at the time of the accident. These documents clearly establish the factum of accident and also establish that Ashokbhai has expired as a result of the accident. In respect to the age of the deceased, the inquest panchnama at Exh.67 shows that deceased Ashokbhai was approximately aged 18 years. The post mortem report at Exh.65 mentions that the body appeared to be of a person, aged about 18 years. No documentary evidence was produced by the claimant in respect to the age of the deceased, but in the application, the claimants have mentioned the age of deceased Ashokbhai as 20 years. In absence of any document, it is permissible for the Tribunal to decide on the preponderance of probability as to what would be the age of the victim and in light of the inquest panchnama and post mortem report, the Tribunal has come to the conclusion that the age of the deceased at the time of death to be in between 18 and 20 years.

16. The Tribunal has considered the income of the deceased not in light of the evidence produced by the

claimants vide Mark 74/1 certificate which suggests the income of the deceased between Rs.3000 to Rs.3500, but in absence of the documentary evidence, the Tribunal has assessed the income of the deceased as Rs.2000/- per month. The submission of Ms.Megha Jani is that they did not get any opportunity to challenge the income of the deceased because this being an application for interim compensation which has been decided by the Tribunal without any evidence on record. In light of this submission of Ms.Megha Jani, if we see Schedule-II and consider the age of the victim between 15 and 20 years and consider the income which has been worked out by the Tribunal at Rs.24,000/- per annum, the amount would be Rs.4,56,000/-. It is necessary to note one more aspect that the said Schedule-II also provides a Rs.15,000/notional earning in case of non-earning person. So, it is not necessary that while deciding the application under Section 163-A, the opportunity to the Insurance Company is required to be given to challenge the income of the deceased. In the facts of the present case, there is a certificate produced by the owner Jasmatbhai at Mark 74/1 which suggests the income of the deceased in between Rs.3200/- and Rs.3500/- per month. However, the Tribunal has not considered the same and has come to the conclusion on the basis of the work which has been carried out by the deceased of polishing diamonds, it has considered Rs.2000/- as income of the deceased. The age tallies with the Second Schedule when the age of the victim is between 15 and 20 years and the yearly income is Rs.24,000/- and therefore, the amount of compensation comes to Rs.4,56,000/-. Another aspect is that here the claimants have filed the application under Section 166 and during the pendency of the main petition, and the claimants have filed two applications - one under Section 140 and the other under Section 163-A of the Act. In respect to the application under Section 140, no order has been passed by the Tribunal and in respect to application under Section 163-A, vide Exh.172, the Tribunal has passed the present order. Initially, a contention was raised by the appellant that during the pendency of the application under Section 166, this order cannot be passed by the Tribunal. Therefore, ultimately, the learned Advocate appearing on behalf of the claimants has made a statement that the main petition under Section 166 of the Act had been withdrawn by the claimants. In such a situation, the contention raised by learned Advocate Ms.Megha Jani has been examined in light of the fact that if the claimants have not filed application under Section 166 of the Act, and straightway only one application may be filed under Section 163-A of the Act. In such circumstances, if the claimants have not filed

application under Section 166 of the Act, then can it be possible that the Tribunal is not entitled to examine the application under Section 163-A of the Act? The Tribunal, in such a situation, is having suo motu powers to decide such application under Section 158(6) read with Section 166(4) of the Act. Therefore, according to our opinion, the contention which has been raised by learned Advocate Ms.Megha Jani cannot be accepted simply on the ground that it is a statutory remedy available to the claimants in case of vehicular accident. Three remedies are open to the claimants - (i) under Section 166, (ii) under Section 140 and (iii) under Section 163-A of the Act. The claimants can file appropriate application either under Section 166 as well as under Section 140 or under Section 163-A of the Act. The Tribunal is dutybound to consider the application when statutory provision is made by the Legislation. Therefore, according to our opinion, and looking to the provisions made under Section 163-A and Schedule-II, there is no need to give any opportunity to the Insurance Company in respect to challenge the income of the deceased. It is a statutory provision binding to the Tribunal to decide such application on the basis of the evidence which has been produced by the claimants before the Tribunal. Sub-section (2) of Section 163-A is very clear and it gives power to decide such application like "no fault liability" similar to Section 140 of the Act. However, looking to the facts of the present case, on the contrary, it appears that the Tribunal has relied upon the certificate vide Mark 74/1 and thereafter the income of the deceased in light of the work which was performed by the deceased who was aged about 20 years and it has rightly assessed the reasonable income of Rs.2000/- per month which comes to Rs.24,000/per month and rightly applied the multiplier of 19, which works out to Rs.4,56,000/-. After deducting 1/3rd amount being Rs.1,52,000/- towards personal expenses, the Tribunal has rightly awarded Rs.3,04,000/and ultimately added Rs.2000/- for funeral expenses and Rs.2500/- for loss of estate, the grand total of which comes to Rs.3,08,500/-. The said compensation which has been granted by Tribunal is just, reasonable and proper looking to the facts which are on record. According to our opinion, the Tribunal has rightly examined the application and decided the same in accordance with law. We are in total agreement with the finding and the ultimate conclusion given by the Tribunal. The contention which has been raised by learned Advocate Ms.Megha Jani is, therefore, rejected. There is no error committed by the Tribunal while deciding the said application and therefore, according to our opinion, there is no substance in the present appeal

and hence, the same is dismissed, with no order as to costs.

17. The amount of Rs.25,000/- which has been deposited by the appellant Insurance Company before this Court be transmitted to the concerned Tribunal immediately. Learned Advocate Ms.Megha Jani has submitted that the entire amount of compensation together with interest and costs has been deposited by the appellant Insurance Company before the concerned Tribunal. However, it is clarified that, in case any additional amount has been deposited by the Insurance Company, they are entitled to withdraw the same after satisfying the Tribunal.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)
Sreeram.